Federal Court of Appeal Cour d'appel fédérale

Date: 20230413

Docket: A-109-21

Citation: 2023 FCA 78

CORAM: **WEBB J.A.**
LASKIN J.A.
GOYETTE J.A.

BETWEEN:

EMERGIS INC.

Appellant

and

HIS MAJESTY THE KING

Respondent

Heard at Toronto, Ontario, on December 12, 2022.

Judgment delivered at Ottawa, Ontario, on April 13, 2023.

REASONS FOR JUDGMENT BY: WEBB J.A.
GOYETTE J.A.

CONCURRED IN BY: LASKIN J.A.

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REASONS FOR JUDGMENT

WEBB J.A. and GOYETTE J.A.

[1] This appeal raises the issue of the interpretation of subsection 20(12) of the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.) (the ITA) in relation to taxes paid to the Government of the United States on interest paid by a partnership to a corporation resident in Canada. In this case, Emergis Inc. (Emergis) is the corporation that paid withholding taxes in 2000 and 2001 on interest payments made by a partnership to it. Emergis claimed a deduction for these withholding

taxes. The Minister of National Revenue (Minister) denied the deduction and the Tax Court dismissed Emergis' appeal (2021 TCC 23).

[2] For the reasons that follow, we would allow the appeal.

I. Background

[3] Emergis implemented the following structure (referred to as a "tower structure") to acquire a US corporation (UP&UP):

- a general partnership was formed under the laws of Delaware (USGP) with Emergis holding a 99.9% interest and a subsidiary of Emergis (Cansubco) holding the remaining 0.1% interest;
- USGP incorporated a Nova Scotia unlimited liability company (NSULC) and USGP was its sole shareholder;
- USGP and NSULC incorporated a limited liability company under the laws of Delaware (LLC);
- a Delaware corporation (US Holdco) was incorporated by Emergis;
- US Holdco acquired shares of Acquisitionco. US Holdco also acquired the shares of Jetco Inc. (a corporation incorporated by Emergis under the laws of Delaware) from Emergis and then transferred these shares to Acquisitionco.

[4] The funding for the acquisition of UP&UP flowed from Emergis through the structure as follows:

- Emergis (and Cansubco, using funds received from Emergis) made capital contributions of approximately US$33 million to USGP;

- Emergis lent USGP approximately US$267 million (the Emergis Loan). Interest was payable on the Emergis Loan;

- USGP used the funds (approximately US$300 million) to subscribe for shares in NSULC;

- USGP also subscribed for 1 share of LLC for US$100 and NSULC subscribed for shares of LLC for approximately US$300 million;

- LLC lent Acquisitionco approximately US$300 million. Interest was payable on this loan;

- Emergis subscribed for shares of US Holdco for approximately US$242 million; and

- US Holdco subscribed for shares of Acquisitionco for approximately US$242 million.

[5] Jetco merged with UP&UP. The merged company then merged with Acquisitionco to form US Amalco. As a result, US Amalco was indebted to LLC in the amount of approximately US$300 million.

[6] The transactions that gave rise to this appeal are the following:

- US Amalco paid interest on the debt it owed to LLC;

- LLC paid dividends to NSULC;

- NSULC paid dividends to USGP; and
- USGP paid interest to Emergis on the Emergis Loan.

[7] For the purposes of the ITA, NSULC included the dividends it received from LLC in its income and claimed a deduction under subsection 113(1) of the ITA in the amount of the dividends, as they were paid out of exempt surplus. USGP (a partnership for the purposes of the ITA) allocated its net income (which included the dividends received from NSULC and an expense for the interest on the Emergis Loan) to its partners in proportion to their partnership interests. Emergis reported the net income allocated to it by USGP and claimed a deduction under subsection 112(1) of the ITA in the amount of the dividends allocated to it. Emergis also included in income the interest paid by USGP on the Emergis Loan and claimed a deduction under subsection 20(12) of the ITA for the withholding taxes paid to the US Government on this interest.

[8] For US tax purposes, LLC and NSULC were disregarded entities and therefore the transactions described in paragraph 6 were treated as a payment of interest from US Amalco to USGP. USGP was treated as a corporation for US tax purposes and paid taxes to the US Government on its net income. These taxes paid by USGP to the US Government on its net income are not the taxes paid to a foreign government that are in issue in this appeal.

[9] Rather, the only issue in this appeal is whether the US withholding taxes paid by Emergis on the interest payments on the Emergis Loan are deductible in computing the income of Emergis.

II. Subsection 20(12) of the ITA

[10] In 2000 and 2001 (the taxation years in issue in this appeal), subsection 20(12) of the ITA read as follows:

In computing a taxpayer's income for a taxation year from a business or property, there may be deducted such amount as the taxpayer claims not exceeding the non-business income tax paid by the taxpayer for the year to the government of a country other than Canada (within the meaning assigned by subsection 126(7) read without reference to paragraphs (*c*) and (*e*) of the definition "non-business-income tax" in that subsection) in respect of that income, other than any such tax, or part thereof, that can reasonably be regarded as having been paid by a corporation in respect of income from a share of the capital stock of a foreign affiliate of the corporation.	Est déductible dans le calcul du revenu d'un contribuable pour une année d'imposition tiré d'une entreprise ou d'un bien le montant que le contribuable demande, ne dépassant pas l'impôt sur le revenu ne provenant pas d'une entreprise (au sens de la définition de «impôt sur le revenu ne provenant pas d'une entreprise» au paragraphe 126(7), compte non tenu des alinéas *c*) et *e*) de celle-ci) qu'il a payé pour l'année à un pays étranger au titre de ce revenu, à l'exception de tout ou partie d'un tel impôt qu'il est raisonnable de considérer comme payé par une société à l'égard du revenu tiré d'une action du capital-actions d'une société étrangère affiliée de la société.

[11] There is no dispute that the withholding taxes in issue were non-business income taxes paid by Emergis to the US Government. The only issue is whether the exception provided in subsection 20(12) of the ITA is applicable:

> … other than any such tax, or part thereof, that can reasonably be regarded as having been paid by a corporation in respect of income from a share of the capital stock of a foreign affiliate of the corporation.

III. Decision of the Tax Court

[12] The Tax Court Judge considered the text, context and purpose of subsection 20(12) of the ITA in determining that Emergis was not entitled to a deduction in computing its income for the taxes paid to the US Government. The Crown argued before the Tax Court that the decision of this Court in *FLSmidth Ltd. v. The Queen*, 2013 FCA 160 (*FLSmidth*) was dispositive of Emergis' appeal. However, the Tax Court Judge noted that although the structure and transactions in *FLSmidth* were similar to the structure and transactions implemented by Emergis, the taxes, which are in issue in this appeal, are not the taxes paid by the partnership (which was the tax in issue in *FLSmidth*) and therefore *FLSmidth* was distinguishable. Thus, he found that the decisions of the Tax Court and this Court in *FLSmidth* were not determinative of the result in the case before him. We agree.

[13] While the structure employed in *FLSmidth* was substantially the same as the structure used in the appeal before us, the tax in issue in *FLSmidth* was the tax paid by the partnership on its net income to the US Government. In this case, Emergis confirmed that USGP had net income that, as a result of USGP being treated as a corporation for US tax purposes, was subject to tax imposed by the US Government. Emergis is not, however, claiming any deduction for the taxes USGP paid to the US Government. Rather, the deductions claimed in this case are for the taxes Emergis paid to the US Government on the interest paid by USGP on the Emergis Loan.

[14] As part of his textual analysis, the Tax Court Judge found that while the words "in respect of" are very broad, it is still necessary to find a connection between the US taxes paid by Emergis and the dividend income received by NSULC (paragraph 69 of his reasons).

[15] In paragraph 71 of his reasons, the Tax Court Judge referred to the specific wording of the exception in issue:

> [71] However, the reference in subsection 20(12) to the U.S. tax "that can reasonably be regarded as having been paid by a corporation in respect of income from a share of the capital stock of a foreign affiliate of the corporation" clearly suggests to consider whether the income from shares received by a corporation other than the taxpayer can reasonably be regarded as the one in respect of which the U.S. tax [was] paid by the taxpayer claiming the deduction.

[16] The Tax Court Judge then considered the flow of funds used to pay the interest and concluded that "there is some connection between the interest income paid by USGP and the dividends paid by LLC to USGP, which were reclaimed and reported by Emergis through its partnership interest in USGP" (paragraph 74 of his reasons). Although the Tax Court Judge referred to "the dividends paid by LLC to USGP", USGP was not a shareholder of LLC. The dividends were paid by LLC to NSULC and NSULC, in turn, paid dividends to USGP.

[17] As part of the context, the Tax Court Judge considered the various ways by which relief for foreign income taxes is provided:

- A deduction in computing income for certain dividends from foreign affiliates (section 113 of the ITA);

- Tax credits (section 126 of the ITA); and

- A deduction in computing income for the foreign taxes paid (subsection 20(12) of the ITA).

[18] The Tax Court Judge stated that a taxpayer cannot claim relief under more than one provision for any foreign taxes paid in relation to a particular item of income. In paragraphs 78 to 80 of his reasons, the Tax Court Judge considered that Emergis essentially did not pay Canadian tax on the interest paid by USGP on the Emergis Loan. Although the interest paid by USGP to Emergis would be income to Emergis, since Emergis held a 99.9% interest in USGP, it also, in effect, received 99.9% of the benefit of the interest expense claimed by USGP. The Tax Court Judge also noted that Emergis received the benefit of a deduction under subsection 112(1) of the ITA in the amount of the NSULC dividends allocated by USGP to Emergis.

[19] With respect to the purpose of the provision, the Tax Court Judge concluded that there was only one cross-border transaction recognized under the ITA – the dividends paid by LLC to NSULC. The Tax Court Judge's conclusions on purpose are summarized in paragraphs 87 to 89 of his reasons:

> [87] It is not because the interest payment was not taxable in Canada that the exclusionary clause applied: it is because the LLC dividend in combination with the hybrid nature of the US partnership has resulted in only one inbound cross-border transaction having been perceived by Canada: the LLC dividend. In other words, Canada only sees one cross-border transaction: the LLC dividend. Canada fully exempts that income under subsection 113(1). The ultimate cross-border interest payment received by Emergis, although it is the one on which U.S. tax was paid, is partly a payment made from Emergis to itself. For 99.9% of the interest received, Emergis' foreign source of income can reasonably be regarded to be that of the LLC dividend, such that if any foreign tax was paid it must be regarded as having been paid in respect of that foreign source income.

> [88] The hybrid nature of USGP was necessary for the interest not to be taxable in Emergis' income. Without the dividend allocation and interest deduction claimed by the partnership being allocated to Emergis, the interest would have been fully taxable.
>
> [89] Canada already subsidizes the earning of foreign income by permitting its residents to deduct interest on money borrowed to earn exempt dividends. Granting an additional deduction in the circumstances of this case, on top of the paragraph 20(1)(c) deduction claimed to reduce to nil the income on the interest payment, would amount to Canada subsidizing the government of another country when it imposes tax that from Canada's perspective is (partly) not even recognized.

IV. Issue and Standard of Review

[20] The issue in this appeal is whether Emergis is entitled to a deduction under subsection 20(12) of the ITA for the taxes paid to the US Government on the interest paid by USGP to Emergis. In particular, the issue is the interpretation of the exception provided in this subsection:

> … other than any such tax, or part thereof, that can reasonably be regarded as having been paid by a corporation in respect of income from a share of the capital stock of a foreign affiliate of the corporation.

[21] As the interpretation of this provision is a question of law, the standard of review is correctness (*Housen v. Nikolaisen*, 2002 SCC 33).

V. Analysis

[22] The focus in this appeal is on the interpretation of the exception contained in subsection 20(12) of the ITA. Questions of statutory interpretation are to be decided based on a textual, contextual, and purposive analysis.

[23] As noted by the Supreme Court of Canada in *Canada v. Loblaw Financial Holdings Inc.*, 2021 SCC 51:

> [41] This narrow question of statutory interpretation requires us to draw upon the well-established framework that "statutory interpretation entails discerning legislative intent by examining statutory text in its entire context and in its grammatical and ordinary sense, in harmony with the statute's scheme and objects" (*Michel v. Graydon*, 2020 SCC 24, at para. 21). Where the rubber hits the road is in determining the relative weight to be afforded to the text, context and purpose. Where the words of a statute are "precise and unequivocal", their ordinary meaning will play a dominant role (*Canada Trustco Mortgage Co. v. Canada*, 2005 SCC 54, [2005] 2 S.C.R. 601, at para. 10). In the taxation context, a "unified textual, contextual and purposive" approach continues to apply (*Placer Dome Canada Ltd. v. Ontario (Minister of Finance)*, 2006 SCC 20, [2006] 1 S.C.R. 715, at para. 22, quoting *Canada Trustco*, at para. 47). In applying this unified approach, however, the particularity and detail of many tax provisions along with the *Duke of Westminster* principle (that taxpayers are entitled to arrange their affairs to minimize the amount of tax payable) lead us to focus carefully on the text and context in assessing the broader purpose of the scheme (*Placer Dome*, at para. 21; *Canada Trustco*, at para. 11). This approach is particularly apposite in this case, where the provision at issue is part of the highly detailed and precise FAPI regime. I must emphasize again that this is not a case involving a general anti-avoidance rule. The provision at issue is part of an exception to the definition of "investment business" within the highly intricate, highly defined FAPI regime. If taxpayers are to act with any degree of certainty under such a regime, then full effect should be given to Parliament's precise and unequivocal words.

[24] In interpreting subsection 20(12) of the ITA, it is important to focus on the words chosen by Parliament. The first part of this subsection identifies the deduction in issue as "the non-business income tax paid by the taxpayer for the year to [a foreign] government". This requires a determination of the foreign tax in issue, which leads to the question of what transaction or event gave rise to this foreign tax.

[25] The second part of subsection 20(12) of the ITA, which sets out the exception, provides that the exception applies to "such tax, or part thereof that can reasonably be regarded as having been paid by a corporation in respect of income from a share of the capital stock of a foreign affiliate of the corporation".

[26] As a result, the questions that need to be addressed in this appeal are:

1. What tax was paid by Emergis to the US Government?

2. Is it reasonable to conclude that this tax was in respect of income from a share of the capital stock of a foreign affiliate of Emergis?

[27] There is no dispute that the relevant taxes are the withholding taxes imposed by the US Government on the interest paid by USGP to Emergis. There is also no dispute that the relevant foreign affiliate of Emergis is LLC.

[28] It is clear, from the perspective of the country that imposed the taxes in issue, that it would not be reasonable to regard the US Government as imposing a tax in respect of the income from the shares of LLC, as the US Government did not recognize the separate existence of LLC. The US Government viewed the part of the structure that included NSULC and LLC on a consolidated basis.

[29] Since the structure was not viewed on a consolidated basis for the purposes of the ITA, a more detailed analysis is required to determine if it is reasonable, based on how the transactions

were viewed for the purposes of the ITA, to regard the taxes paid by Emergis as taxes paid in respect of the income from the shares of LLC.

[30] For the purposes of the ITA, NSULC and LLC were treated as separate legal entities. The dividends paid by LLC to NSULC were included in the income of NSULC. Since NSULC was entitled to claim a deduction under subsection 113(1) of the ITA in the same amount as the dividends, no tax was paid on these dividends.

[31] The Tax Court Judge, in paragraph 71 of his reasons, found that the text of subsection 20(12) of the ITA clearly indicated that the income received by one corporation (which would be NSULC in this case) can reasonably be regarded as the income in respect of which another corporation (Emergis in this case) paid the taxes to the foreign government:

> [71] However, the reference in subsection 20(12) to the U.S. tax "that can reasonably be regarded as having been paid by a corporation in respect of income from a share of the capital stock of a foreign affiliate of the corporation" clearly suggests to consider whether the income from shares received by a corporation other than the taxpayer can reasonably be regarded as the one in respect of which the U.S. tax [was] paid by the taxpayer claiming the deduction.

[32] In *Envision Credit Union v. Canada*, 2013 SCC 48 the Supreme Court noted that when the ITA considers the assets held by a corporation to be the assets held by the shareholders, it does so explicitly:

> … It is a basic rule of company law that shareholders do not own the assets of the company: see, e.g., *Wotherspoon v. Canadian Pacific Ltd.*, [1987] 1 S.C.R. 952, at p. 1033. While the ITA provides for "look-through" rules in certain circumstances which permit this basic rule to be ignored for tax purposes, those provisions are explicit: see, e.g., the s. 256(1.2) look-through rules that deem

> shares (property) owned by a corporation to be controlled by the shareholders of the corporation.

[33] Just as the ITA is explicit when the rule that shareholders do not own the assets of the corporation is to be ignored, the ITA is explicit when the separate existence of the corporation can be ignored with respect to the income earned by a corporation and, therefore, when it is possible to look thorough a corporation and treat the income of the corporation as the income of its shareholders. For example, subsection 91(1) of the ITA explicitly requires a Canadian resident shareholder to include in its income its proportionate share of the foreign accrual property income of its controlled foreign affiliate:

91 (1) In computing the income for a taxation year of a taxpayer resident in Canada, there shall be included, in respect of each share owned by the taxpayer of the capital stock of a controlled foreign affiliate of the taxpayer, as income from the share, the percentage of the foreign accrual property income of any controlled foreign affiliate of the taxpayer, for each taxation year of the affiliate ending in the taxation year of the taxpayer, equal to that share's participating percentage in respect of the affiliate, determined at the end of each such taxation year of the affiliate.	91 (1) Dans le calcul du revenu pour une année d'imposition d'un contribuable résidant au Canada, il doit être inclus, relativement à chaque action qui lui appartient dans le capital-actions d'une société étrangère affiliée contrôlée du contribuable, à titre de revenu tiré de l'action, le pourcentage du revenu étranger accumulé, tiré de biens, de toute société étrangère affiliée contrôlée du contribuable, pour chaque année d'imposition de la société affiliée qui se termine au cours de l'année d'imposition du contribuable, égal au pourcentage de participation de cette action, afférent à la société affiliée et déterminé à la fin de chaque telle année d'imposition de cette dernière.

[34] The Tax Court Judge erred in concluding that the wording of subsection 20(12) of the ITA "clearly suggests to consider whether the income from shares received by a corporation

other than the taxpayer can reasonably be regarded as the one in respect of which the US tax [was] paid by the taxpayer claiming the deduction". As noted above, the exception in issue states:

> … other than any such tax, or part thereof, that can reasonably be regarded as having been paid by a corporation in respect of income from a share of the capital stock of a foreign affiliate of the corporation.

[35] Emergis paid the taxes in issue in this appeal. LLC is the relevant foreign affiliate of Emergis. The income from the shares of LLC was paid to NSULC. There is nothing in the language of this provision that explicitly provides that the separate existence of the two corporations (Emergis and NSULC) is to be ignored and that the income of NSULC is to be considered to be the income of Emergis. The text of subsection 20(12) of the ITA is insufficient to displace the general rule that the assets and income of a corporation are not the assets and income of its shareholders.

[36] Therefore, there is no basis to find that subsection 20(12) of the ITA explicitly (or as the Tax Court Judge stated, "clearly") provides that NSULC's income from its LLC shares should be treated as the income of Emergis, and hence as the income on which Emergis paid the taxes to the US Government.

[37] The interest paid by USGP was paid on the Emergis Loan pursuant to the terms of this loan. The borrowed funds, together with the funds received as a capital contribution, were used to purchase shares of NSULC. NSULC, in turn, used these funds to purchase shares of LLC. While the dividends paid by LLC to NSULC, and then by NSULC to USGP, funded the interest

payments to Emergis, it does not necessarily follow that the taxes paid by Emergis to the US Government can reasonably be regarded as having been paid in respect of the dividend paid by LLC to NSULC.

[38] Emergis paid the taxes in issue on interest paid by USGP. USGP paid this interest pursuant to its obligation to pay interest on the Emergis Loan. Interest was payable at the rate of 12.25% (reduced to 12.127% after October 1, 2000) of the amount of the outstanding debt. The amount of interest was not based on the income from the shares of LLC. The interest was not a distribution or allocation of income earned directly or indirectly by Emergis from the shares of LLC.

[39] The text of subsection 20(12) of the ITA does not support the conclusion reached by the Tax Court Judge. Instead the text of this provision supports a finding that the taxes paid by Emergis to the US Government cannot reasonably be regarded as taxes paid by Emergis in respect of income from the shares of LLC.

[40] The context of subsection 20(12) does not support the conclusion reached by the Tax Court Judge.

[41] First, in *FLSmidth*, this Court rejected the argument that a deduction under subsection 20(12) of the ITA is only available when there has been no deduction in respect of dividends. In *FLSmidth,* the deduction had been claimed under subsection 113(1) of the ITA and this Court found that “there are no words in the foreign affiliate provisions which expressly exclude the

application of 20(12)" (*FLSmidth*, at paragraph 51). Similarly, there are no words in the provisions relating to the computation of income or taxable income of a corporation that contain such an exclusion.

[42] Second, and more importantly, Emergis had two sources of income for purposes of the ITA that are relevant in this appeal: the shares in NSULC (held by USGP) and the Emergis Loan. Emergis included the NSULC dividends allocated to it by USGP in its income under paragraph 96(1)(*f*), subsection 82(1) and paragraph 12(1)(*j*) of the ITA and the interest on the Emergis Loan in its income under paragraph 12(1)(*c*) and subsection 12(3) of the ITA. Emergis claimed the subsection 112(1) deduction in respect of the NSULC dividends allocated by USGP to it – not in respect of the interest paid on the Emergis Loan. Therefore, the Tax Court Judge's conclusion that Emergis is claiming both subsections 112(1) and 20(12) deductions in respect of the same "item" of income is unfounded. There is no denying that the interest deduction claimed by USGP in computing its income reduced the income that USGP allocated to Emergis. That being said, the income allocated to Emergis, which included the dividends paid by NSULC to USGP, is distinct from the interest payments that resulted in the taxes paid to the US Government that are in issue in this appeal.

[43] It follows that there is nothing in the context of subsection 20(12) of the ITA that militates against the 20(12) deduction being available to Emergis.

[44] Finally, the Tax Court Judge's analysis regarding the purpose of subsection 20(12) was distorted by his assumption that USGP's payment of interest to Emergis was a payment by

Emergis to itself. It was not. As stated by this Court, since paragraph 96(1)(*c*) of the ITA requires that a partnership compute its income as though it was a separate person, the legal character of an amount paid by a partnership to a partner is a function of the legal obligation being discharged, not the economic substance of the transaction (*R. v. Pinot Holdings Ltd.* 99 D.T.C. 5772 at page 5778, 1999 CanLII 9097). USGP paid interest because it entered into the Emergis Loan pursuant to which it was obligated to pay interest to Emergis. Given that it borrowed money for the purpose of earning income, USGP was entitled to an interest deduction in computing its income. As for Emergis, it included the interest in its income as it was required to do. Since it paid withholding tax to the US Government on this interest, Emergis was entitled to a deduction pursuant to subsection 20(12) in respect of these taxes. Granting this deduction does not amount to Canada subsidising the US Government nor does it offend the purpose of subsection 20(12).

[45] It appears that subsection 20(12) of the ITA was enacted for two reasons: (a) because foreign taxes, not being incurred to earn income, are not deductible (paragraph 18(1)(*a*) of the ITA); and (b) to address the limitations in subsection 126(1) of the ITA, one of them being the unavailability of a credit when the income on which the tax imposed by the foreign government has no foreign source. See: "Bill C-56, An Act to amend the statute law relating to income tax and to authorize payments related to provincial sales tax reductions", Consideration in committee of the whole, *House of Commons Debates*, 30-3, No. 6 (12 June 1978) at 6315 (Hon Jean Chrétien); *4145356 Canada Ltd. v. R.*, 2011 TCC 220 (T.C.C. [General Procedure]) at paras. 61 to 64; Robert Couzin, "The Foreign Tax Credit" in *Report of Proceedings of the Twenty-Eighth Tax Conference*, 1976 Conference Report (Toronto: Canadian Tax Foundation, 1977) at p. 70; and Douglas M. Deruchie, "1978 Federal Income Tax Changes" in *Report of Proceedings of the*

Thirtieth Tax Conference, 1978 Conference Report (Toronto: Canadian Tax Foundation, 1980) at p. 267. In the case at bar, although Emergis paid taxes to the US Government, since it did not have a source of income in the US, Emergis could not avail itself of the foreign tax credit. Allowing it to benefit from the subsection 20(12) deduction would therefore be in line with the purpose of this provision.

VI. Conclusion

[46] As a result, we would allow this appeal, with costs and set aside the judgment of the Tax Court. Rendering the judgment that the Tax Court should have made, we would allow the appeal of Emergis from the reassessment of its 2000 and 2001 taxation years, with costs in the Tax Court, and refer the matter back to the Minister of National Revenue for reconsideration and reassessment on the basis that Emergis is entitled, in computing its income for 2000 and 2001, to claim a deduction for the withholding taxes paid in 2000 and 2001 to the US Government on the interest paid on the Emergis Loan.

"Wyman W. Webb"
J.A.

"Nathalie Goyette"
J.A.

"I agree.
J.B. Laskin J.A."

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

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